

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 19, 2004

Division: County Administrator

Bulk Item: Yes ☐ No ☒

Department: County Administrator

AGENDA ITEM WORDING:

1. Discussion of the City of Marathon outstanding monthly solid waste billings which now amount to over \$541,000 and proposed settlement offer from the City Manager, Mr. Scott Janke, of \$270,720.84 for resolution of the matter. It should be noted that while the City Council has been informed of the proposed settlement offer, no official approval has been made by the Council to date.
2. Discussion of the proposed new inter-local agreement as drafted by the City of Marathon between the County, the City of Marathon, and Marathon Garbage Service for solid waste services.

ITEM BACKGROUND: The City of Marathon incurred expenses for solid waste fees for the period of June 2003 through October 1, 2003, at which time legal operational responsibility for solid waste services within the City of Marathon was officially transferred back to the County. The new franchise agreement between the County and Marathon Garbage Service is still under negotiation.

PREVIOUS RELEVANT BOCC ACTION: The County Commission has developed a policy that all residents participating in the solid waste program of the County would be treated equitably, meaning that the County will not charge one area of the Keys more than another or require one area of the Keys to subsidize the solid waste fees of another.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST: _____

BUDGETED: Yes ☐ No ☐

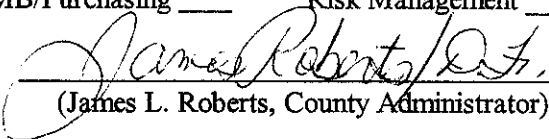
COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☐ AMOUNT PER MONTH _____ Year _____

APPROVED BY: County Atty _____ OMB/Purchasing _____ Risk Management _____

DIVISION DIRECTOR APPROVAL: _____


(James L. Roberts, County Administrator)

DOCUMENTATION: Included ☒ To Follow ☐ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # 09



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 289-4130 Fax: (305) 743-3667
www.marathonflorida.org

April 21, 2004

APR 23 2004

Commissioner Rice
9400 Overseas Hwy., #210
Marathon Airport Terminal
Marathon, FL 33050

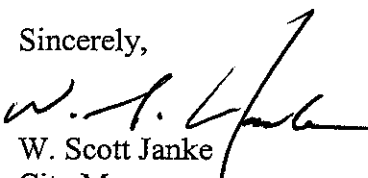
Dear Commissioner Rice:

I'd like to thank you for organizing a meeting between the City of Marathon and Monroe County to discuss the issues surrounding solid waste payments. As I think you know, we have all been working on this for over a year. As a result of our meeting on Monday, April 19, 2004, I have discussed a possible settlement informally with each member of the City Council. As a result of my discussions, I feel comfortable offering the County a cash payment of \$270,720.84 to resolve our differences.

I would also like to ask you once again to support an Interlocal Agreement between the City of Marathon, Monroe County and Marathon Garbage Service as you move forward with a long term relationship for solid waste services here in Marathon. A three party Interlocal Agreement is the only way to insure a long term relationship. The Draft Interlocal Agreement I sent to you can be amended to satisfy the County's concerns regarding past solid waste costs. However, the agreement should include a 3% franchise fee for the City of Marathon. Marathon Garbage Service is perhaps the heaviest normal traffic using City roads. It is normal for a City to receive a franchise fee from solid waste companies to help compensate the City for the costs of road maintenance and repairs.

Again, thank you for calling us all together to discuss this issue. I hope we can resolve it soon. Please let me know if you have any suggestions regarding either our offer or the Draft Interlocal Agreement.

Sincerely,


W. Scott Janke
City Manager

MEMORANDUM

TO: Commissioner David Rice

FROM: James L. Roberts
County Administrator

DATE: April 8, 2004

SUBJECT: Marathon Solid Waste Bills

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As you requested, I am enclosing the information concerning billing for the City of Marathon for solid waste services at the County's franchise station. The billings cover the months of services and the months of June, 2003 through October, 2003. The bills are as follows:

| <u>Billing Date</u> | <u>Amount</u> |
|---------------------|---------------|
| 6/30/03             | \$136,022.84  |
| 7/30/03             | 133,222.44    |
| 8/30/03             | 138,965.04    |
| 9/30/03             | 133,225.84    |

In addition, there are summary statements indicating a balance brought forward dated October 31, 2003 of \$541,436.15. That is repeated in an additional statement submitted to the City dated November 30, 2003 and one dated December 31, 2003. There is another statement dated January 31, 2004 and one dated February 29, 2004 and one dated March 31, 2004. Some minor adjustments of just a few dollars over that period result in \$541,441.68 owed.



James L. Roberts  
County Administrator

JLR:dlf

Enc.

Cc: Board of County Commissioners  
Reggie Paros, Public Safety Director  
John R. Collins, County Attorney

**BOARD OF COUNTY COMMISSIONERS**

Mayor Murray E. Nelson, District 5  
Mayor Pro Tem David P. Rice, District 4  
Dixie M Spehar, District 1  
George Neugent, District 2  
Charles "Sonny" McCoy, District 3

Monroe County  
Board of County Commissioners  
Office of the County Administrator  
The Historic Gato Cigar Factory  
1100 Simonton Street, Suite 205  
Key West, FL 33040  
(305) 292-4441 - Phone  
(305) 292-4544 - Fax



APR - 7 2004

April 5, 2004

Mr. Scott Janke, City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

Dear Mr. Janke:

On March 24, 2004, you responded to my letter of March 11, 2004, in reference to the funds owed to the County of Monroe by the City of Marathon for fees for solid waste services from June, 2003, through October, 2003. That amount totals over \$541,000 and has been billed monthly to the City of Marathon as the County provided services and the debt was incurred.

I shall attempt to respond to all the issues you raised in your letter. However, a short history might again be of some assistance. When the City of Marathon incorporated, the County was administering the solid waste program and was willing to continue that relationship. That meant the County would continue to do all billings and provide services through the efforts of the local franchisee and the County's transfer station. The City subsequently utilized its prerogative and took over the control and operation of the solid waste program. The County was no longer directly involved except that the City, by its choice, continued to bring its solid waste to the County's transfer station. The price charged by the County, as is charged on behalf of all areas in the County utilizing the transfer station, was and is \$92 per ton. This cost covered haul-out of the solid waste and other expenses.

Marathon attempted to revise the program and, as we understand it, changed the method of billing and was attempting to change the understanding as it existed for years with the franchisee. When Marathon billed residents, it was unable to obtain sufficient revenue to operate the program at the same level. As I recall, approximately two years ago, the funds owed to the County were in the neighborhood of \$1.2 million.

For example, it is the County's understanding that Marathon reduced the billings to duplexes and multi-family structures by \$37 per unit per year, thereby creating a lower revenue stream and contributing to the problem. In addition, Marathon paid a private management company a fee to manage the solid waste program (reputed to be about \$25,000 per year), which also reduced available funds. We understand that billing and collection problems led to further erosion of revenue.

Subsequent to the seating of a new Council, Marathon developed a genuinely cooperative attitude with the County and began paying its arrears over a number of months. Ultimately, Marathon came current with the billings and payments and up through June of 2003 was making payments for the services received. Because of that level of cooperation, the County Commission agreed with the request of the City of Marathon once again to manage and operate the solid waste program. The County fulfilled its responsibilities and on October 1, 2003, legal operational responsibility was transferred to the County. The County undertook direct billing through the Tax Collector and resumed its former relationship with the franchisee. In fact, because of the changes made to the solid waste roll by the City, it was necessary for the County to hire a special consultant who restructured the solid waste roll in a manner that would be fair and efficient and reflect all the users of the solid waste program in the City of Marathon. That Consultant's cost was \$24,954.50 and was not billed to the City as part of the cost of assuming the responsibilities of the program.

From June, 2003 through October 1, 2003, the City of Marathon continued to use the services of the County's transfer station and incurred expense. You are correct, we have discussed this many times and I was quite surprised to see some of the comments in your letter.

First of all, the City and County have been attempting to work together on this issue for quite some time. Up to June of 2003, it appeared as though that relationship was quite solid. There was a meeting with you, me and Mr. Rosasco and we did discuss the issue of unpaid solid waste fees. At that time, you informed us that you had paid us everything that you had collected for solid waste and there wasn't any more money to pay the County. We discussed a proposed interlocal agreement which had come from the City and I explained to you that agreement placed all the liability back on the County, including for the period during which the County did not have solid waste responsibilities in the City. Such an approach would not be acceptable to the County.

You did request the inclusion of the franchise fee for the City in a franchise agreement which was, at that time and still is today, under negotiation for renewal. I have told you that is on the table during negotiations. However, I shall respond to my County Commission with how those negotiations are proceeding rather than reporting to you first.

Also, Marathon has reached an agreement with the local franchisee to pick up solid waste at nine (9) City owned properties for free, with the stated purpose to replace the need for a franchise fee for the City. This is an estimated annual benefit to Marathon of over \$60,000.


I should also point out that what you are asking the County to do is to place the cost on your citizens under the County's name that Marathon was unwilling to do when it had control of the solid waste program. The County agreed to take over the program for the purpose of removing the City from the problems that it had encountered. It seems to me that if the City would like to have funds raised that would be paid back to the City for purposes such as maintenance of your roads, it would be appropriate for the City to levy that revenue in some fashion rather than have the County do it.

Also, prior to you coming to Marathon, the County Commission, in reference to issues involving the City of Marathon solid waste, developed a policy that all people who were covered by the solid waste program anywhere in Monroe County would be treated fairly and equally. The Commission said that it would not charge one area of the Keys more than another and would not expect one area of the Keys to subsidize the solid waste expenses of another.

As you state in your letter, the County and the City do want to maintain a strong cooperative relationship. That is why when you and I were speaking with Mayor Nelson outside of the meeting room of the Governor and Cabinet just a few weeks ago and the solid waste issues came up, I was quite astonished to hear you say something to the effect "I've wiped that obligation off the books." I know the Mayor was quite surprised to hear that also. The fact of the matter is that the City of Marathon continued from June through October of 2003 to utilize the services of the County transfer station and has not compensated the County for that use. Even though you may not have any executed agreements as you have identified, the City has paid these expenses in the past and there is no justification for suddenly discontinuing the payments.

I believe it would be important to return to trying to solve the problem rather than raising specious issues. I am willing to take to the County Commission a reasonable suggestion of how the funds that are owed can be paid. As long as the County continues to manage the solid waste system within the City limits, Marathon should not be incurring future expense. Therefore, the satisfaction of the bills that are owed would relieve Marathon of solid waste financial obligations. If you have a proposal, other than just having the County raise the money for you, please let me know and I shall be glad to evaluate it and provide a recommendation to the County Commission.

Very truly yours,



James L. Roberts  
County Administrator

JLR:dif

Cc: Board of County Commissioners  
Reggie Paros, Public Safety

**INTERLOCAL AGREEMENT**  
**FOR SOLID WASTE COLLECTION**

THIS AGREEMENT (the "Agreement") is dated the \_\_\_\_\_ day of \_\_\_\_\_, 2003 by and between the CITY OF MARATHON, a Florida municipal corporation (the "City") and MONROE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County").

**BACKGROUND**

WHEREAS, Chapters 125 and 166, Florida Statutes, allow counties and municipalities to contract for services to be rendered by the County to the City and by the City to the County, and pursuant to Resolution No 02-07-90 and Chapter 8 of the Monroe County Code, the City has requested inclusion in the County's Municipal Service Benefit Unit (the "MSBU") for the collection, transfer and disposal of residential solid waste; and

WHEREAS, the City desires to contract with the County for the collection, transport, and disposal of all residential solid waste in the City ("Solid Waste Services") until such time as the City is included in the Monroe County Solid Waste Municipal Service Benefit Unit; and

WHEREAS, the City has adopted Ordinance No. \_\_\_\_, a Master Service Assessment Ordinance (the "Ordinance") and Solid Waste Assessment Resolutions No. 02-07-\_\_ and 02-09-111 (the "Resolutions") and pursuant to such documents the City has assessed a residential solid waste collection fee for Fiscal Year 2002-03 in the City (the "Assessments"); and

WHEREAS, the City shall utilize the Assessments to pay for residential Solid Waste Services provided by the County to the City.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the City and County agree as follows:

1. **Solid Waste Services.**

The County shall be the City's franchisee for the purposes of providing the following services (the "Services"):

- 1.1 The County shall be responsible for the collection, transport, and disposal of all residential solid waste generated within the boundaries of the City, as such boundaries are specified in Exhibit "A" of this Agreement.

1.2 The services provided by the County shall also include the collection, transport, and disposal of all solid waste generated from any City operated facilities existing currently or subsequently under control and/or ownership by the City.

1.3 The County shall be responsible for all customer service issues, including providing contact person(s) for the City's residents to use to promptly address any service issues and to respond to any and all matters relating to customer service concerns.

## 2. Compensation.

2.1 For all of the Services provided by the County for Fiscal Year 2002-03, the City shall pay the County the total collections received by the City from the Assessments.

2.2 The payment by the City required under Paragraph 2.1 shall be remitted to the County on a monthly basis. [quarterly?] The amount of the monthly payment shall be equal to the actual Assessment funds received by the City for the month proceeding the payment from the Monroe County Property Appraiser.

2.3 For all of the Services provided by the County for subsequent Fiscal Years, the County shall assess the residential properties located in the City as part of the County's Solid Waste Municipal Service Benefit Unit and retain the funds collected within the Unit as full payment for the provision of the Service.

2.4 If for any reason the parties are unable to meet any statutory requirements to include the City in the County's MSTU for assessments starting Fiscal Year 2003-04 as specified in Paragraph 2.3, the City shall take all steps necessary to levy the assessment through the City's Ordinance and Resolutions for Fiscal Year 2003-04 and shall remit the same to the County in the manner provided in Paragraph 2.2.

2.5 In recognition of the fact that the County in performing the Services contemplated under this Agreement shall have heavy equipment and vehicles utilizing the City's streets and rights of ways, and recognizing that such equipment causes wear and tear to the City's roadway system, the County shall pay the City an annual franchise fee of 7.5% of the total solid waste assessments collected from properties within City limits.

## 3. Term and Renewal.



- 3.1 Upon execution by both parties, this Agreement shall be effective retroactively to October 1, 2002, and shall remain in effect through September 30, 2003, unless earlier terminated in accordance with Paragraph 5. (the "Term")
- 3.2 Unless the City notifies the County in writing of its intent to terminate this Agreement by March 1 of any subsequent year, the Term of this Agreement shall automatically renew with no further action by the parties.
- 3.3 If such Notice of Termination as specified in Paragraph 3.2 is given, this Agreement shall terminate upon the expiration of the then current annual Term, and following the last day of the current annual Term, the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.
- 3.4 The definition of "Term" shall include all renewal terms hereof.

#### 4. Subcontracts.

- 4.1 In providing the Services contemplated by this Agreement, the parties recognize that the County may subcontract with a third party(ies) to provide the actual collection, transport and disposal of the City's solid waste.
- 4.2 Any third party contracts entered into between the County and any third party vendor shall not create any privity between the City and the third party, nor shall any third party vendor be considered a third party beneficiary of the rights of the County under this Agreement.
- 4.3 The County shall be responsible for any violations of applicable state, federal, County or City laws, rules or regulations made by the County's vendor(s) in performing any services contemplated in this Agreement.
- 4.4 Any contracts with any subcontractors entered into by the County shall include provisions for indemnification, insurance and customer service standards matching those provisions in this Agreement.

#### 5. Termination and Default.

- 5.1 In the event of any failure of compliance by either party hereto with any of its obligations to the other party as provided for herein such action shall constitute a default under this Agreement.
- 5.2 Upon any such default, the non-defaulting party shall provide to the defaulting party a written Notice of such default, which Notice (a "Default Notice") shall state in reasonable detail the actions the defaulting party must take to cure the same.
- 5.3 The defaulting party shall cure any such default, within 30 days following the date of the Default Notice.
- 5.4 Notwithstanding the provisions of this Section, if any such default by the defaulting party remains uncured at the conclusion of any specified 30 day cure period, and if the nature of the defaulting party's obligations are such that more than 30 days is required to effect cure, then the defaulting party shall not be in default hereunder and the non-defaulting party shall not have the right to exercise its termination rights granted herein as a result of any such default, if the defaulting party commences cure within the applicable cure period and thereafter diligently pursues cure to completion of performance.
- 5.5 In the event the defaulting party fails to effect any required cure as provided for herein, the defaulting party shall be deemed to be in uncured default hereunder, and the non-defaulting party shall have the right, but shall not be obligated, upon Notice to the defaulting party, to terminate this Agreement.
- 5.6 If such Notice is given, this Agreement shall terminate on the date set forth in the Notice and the parties shall be relieved of all rights and obligations hereunder, except for any rights and obligations that expressly survive termination.

## 6. Indemnification.

- 6.1 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the City does hereby agree to defend, indemnify and hold the County harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the City, its officials, agents or employees, in connection with this Agreement

6.2 To the extent permitted by law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, the County does hereby agree to defend, indemnify and hold the City, its officers, agents, or employees, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the County or any third party vendor contracted by the County in connection with this Agreement.

7. Customer Service Standards.

7.1 The County shall maintain the Customer Service Standards specified in Exhibit "B." [this would include complaints, restoration of driveways from truck damage, cleaning up spilled garbage, and that sort of stuff]

8. Notices. All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to County:

Mr. James Roberts  
County Administrator  
Monroe County  
Public Service Building, Wing II  
5100 College Road, Stock Island  
Key West, Florida 33040

With a copy to:

County Attorney  
310 Fleming Street  
Key West, Florida 33040

If to City:

William Scott Janke  
City of Marathon  
11045-55 Overseas Highway  
Marathon, Florida 33050  
Attn: City Manager

With a copy to:

Nina Boniske  
Weiss, Serota, Helfman, Pastoriza & Guedes, P.A.  
2665 S. Bayshore Dr., Suite 420  
Miami, Florida 33133  
Attn: City Attorney

Any Notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; facsimile; or sent by overnight delivery service.

9. Insurance.

9.1 The City and County agree to insure and/or self insure their respective interests in connection with personal injury, death and personal property damage to the extent each deems necessary or appropriate.

9.2 The County shall require any subcontractor performing the Services contemplated in this Agreement to maintain throughout the duration of this Agreement the following insurance coverages: \_\_\_\_\_

9.3 The County shall require any subcontractor to name the City as an additional insured on any policies.

10. Regulatory Powers.

10.1 Nothing contained herein shall be construed as waiving either party's regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Agreement.

10.2 Nothing herein shall be deemed to create an affirmative duty of either party to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

11. Attorneys Fees and Waiver of Jury Trial.

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. Governing Law.

12.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

13. Entire Agreement/Modification/Amendment.

13.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

13.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14. Access to Records and Audits.

14.1 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the County or its subcontractors involving transactions related to this Agreement.

14.2 The City may cancel this Agreement for refusal by the County, or the County's subcontractor, to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

14.3 The term Records shall refer to any documents, books, data (electronic or hard copy), papers and financial records that result from the County or its subcontractors performance of the Services provided in this Agreement.

15. Nonassignability.

15.1 This Agreement shall not be assignable by County unless such assignment is first approved by the City.

15.2 The provisions of this Section shall not prohibit the County from utilizing the services of subcontractors to perform the Services contemplated in this Agreement.

16. Severability.

16.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

17. Independent Contractor.

17.1 The County and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

18. Waiver

18.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

19. Survival of Provisions

19.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

20. Counterparts

20.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The City, signing by and through its City Manager, attested to by its City Clerk, duly authorized to execute same and by County by and through its Mayor, attested to by the Clerk of the Court.

ATTEST:

CITY OF MARATHON, FLORIDA,  
a Florida municipal corporation

By: \_\_\_\_\_  
Cindy L. Ecklund, City Clerk

By: \_\_\_\_\_  
William Scott Janke

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
USE OF THE CITY ONLY:

By: \_\_\_\_\_  
City Attorney

COUNTY:

BOARD OF COUNTY COMMISSIONERS  
MONROE COUNTY, a political subdivision  
of the State of Florida

ATTEST: DANNY L. KOLHAGE

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor/Chairman

(SEAL)

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
County Attorney